

February 11, 2022

Office of Pesticide Programs  
Docket Number EPA-HQ-OPP-2021-0952  
Environmental Protection Agency Docket Center (EPA/DC)  
(28221T)  
1200 Pennsylvania Ave. NW.  
Washington, DC 20460-0001

**Re: Comments on Emergency Exemption Request – Clothianidin (Docket #: EPA-HQ-OPP-2021-0952)**

Please accept the following comments on behalf of the Center for Biological Diversity (“Center”) in response to the Environmental Protection Agency’s (“EPA”) receipt of a request for an emergency exemption for Clothianidin under the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”). Because the EPA has failed to comply with the clear requirements of FIFRA and the Endangered Species Act (“ESA”), the Center opposes this emergency exemption.

The EPA is considering for the ninth year in a row an “emergency” exemption for Florida citrus growers under Section 18 of FIFRA, allowing the use of clothianidin for Asian citrus psyllid. Section 18 allows for the “emergency” use of a pesticide. Yet the EPA has authorized clothianidin use to become the status quo in Florida, even though citrus greening caused by the Asian citrus psyllid has been considered a “new normal” as far back as 2013.<sup>1</sup> The EPA continues to grant these emergency use requests even with clear evidence of clothianidin’s harm to human health and the environment.

If the EPA wanted to approve this pesticide for use on this crop, there is a legal mechanism for industry to request a new use for a pesticide that goes through full vetting and review under Section 3 of FIFRA. In fact, Valent, U.S.A. Corp. applied for registration of new uses of clothianidin, including on Citrus Fruit Group, under FIFRA Section 3 as early as 2012.<sup>2</sup>

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<sup>1</sup> Keith Bouffard *Citrus Greening Means There Are No More ‘Normal’ Citrus Seasons* Lakeland Ledger (July 19, 2013) <https://www.theledger.com/story/news/2013/07/19/citrus-greening-means-there-are/8131328007/>

<sup>2</sup> 77 Fed. Reg. 13599, 13601 (March 7, 2012); *see also* EPA Docket # EPA-HQ-OPP-2011-0860.

Moreover, EPA and industry have already registered many pesticides for the exact same crop and the exact same insect. Another Section 18 exemption for use on citrus in Florida does not comply with FIFRA.

Last year, the EPA determined that continued use of clothianidin is likely to adversely affect two thirds of all endangered species, including many rare and endangered Florida species such as the sank skink, Florida scrub jay, bluetail mole skink, Audubon's crested caracara, eastern indigo snake and the endangered Florida bonneted bat. Despite making this finding, the EPA is considering a request to authorize increased use of this harmful pesticide across Florida. The EPA originally approved 25,037 pounds per year of clothianidin at a max rate of 0.2 pounds per acre for emergency use.<sup>3</sup> Based on the *same* data, the EPA is now *doubling* the amount to 50,150 pounds of clothianidin per year at a max rate of 0.4 pounds of per acre.<sup>4</sup> Approving this increase is arbitrary and capricious as it appears to be based solely on data nearly a decade-old, with no regard for pollinators or endangered species.

The EPA's proposed action here would violate their clear legal obligations under the Endangered Species Act. The EPA has a dismal track record of complying with its duty under Section 7 of the Endangered Species Act to consult with U.S. Fish and Wildlife Service and the National Marine Fisheries Service (collectively "the Services") to ensure that authorized actions do not jeopardize the existence of any listed species. The failure to comply with the ESA here is contrary to law, arbitrary and capricious, especially since this consultation would only apply to a few species, on a single crop, in a discrete area, with virtually all the needed information already having been developed by the EPA in its nationwide consultation for clothianidin.

Granting this exemption without consultation would be egregious given the impacts to Florida endangered species that clothianidin is likely to adversely affect, such as the subterranean sand skink. The skink uses citrus groves as habitat and could be significantly harmed given the soil drench application proposed. The consultation process is designed to prevent this situation and ensure that protected Florida wildlife will not be pushed closer to extinction.

The EPA has also failed to properly consider the harm that increased clothianidin use would have on Florida pollinators, many of which can be found in and around citrus groves. While sublethal effects to pollinators were predicted from the original application, there is not data analyzing the effects of a vast increase in clothianidin use on native pollinators.<sup>5</sup>

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<sup>3</sup> Applications: Emergency Exemptions for Various Pesticides and Commodities 79 Fed. Reg. 29185 (May 28, 2014) EPA Docket # EPA EPA-HQ-OPP-2014-0316

<sup>4</sup> Application for Emergency Exemption: Clothianidin 87 Fed. Reg. 5475 (Feb 1, 2022) EPA Docket # EPA-HQ-OPP-2021-0952

<sup>5</sup> Florida Emergency Exemption Request at 17 (Feb. 18, 2014), EPA Docket #EPA-HQ-OPP-2021-0952-0002

Since the EPA has failed to comply with FIFRA and the ESA, and since the ecological impacts of clothianidin use are so extreme, we oppose this emergency exemption request.

**I. The EPA's Improper, Routine Use of The Section 18 Emergency Exemption to Address Expected Conditions is Contrary to FIFRA.**

Pesticides may be registered under Section 3 of FIFRA if there will be no “unreasonable adverse effects on the environment,” which is defined as “any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide ...”<sup>6</sup> Section 18 of FIFRA permits the EPA to “exempt any Federal or State agency from any provision of this Act if the [EPA] determines that emergency conditions exist which require such exemption.”<sup>7</sup> EPA approval of an emergency exemption here under Section 18 would violate FIFRA because an urgent, non-routine emergency condition does not exist under FIFRA or EPA's regulations. In addition, re-certification is not appropriate under FIFRA or EPA's regulations because Florida did not comply with the required certifications for re-certification and the only information Florida provided for a ninth exemption is its 2014 Petition for its first emergency exemption. That information is too stale to allow EPA to grant another emergency exemption.

**A. The Ninth Straight Approval of Clothianidin for a Predictable Pest Contravenes FIFRA and the Purpose of Section 18 Exemptions**

**1. An emergency condition does not exist.**

Emergency use of clothianidin on citrus to control Asian citrus psyllid has been approved for *eight* consecutive years in Florida. An approval in 2022 would make nine straight years that an emergency approval was given on the same crops for the same pest in the same state. This routine, chronic condition that does not constitute an “emergency.”

Congress intended use of Section 18 to address urgent pest conditions such as severe and unexpected insect outbreaks. FIFRA regulations state that emergency conditions must be “urgent, non-routine situation[s].”<sup>8</sup> The EPA has further clarified: “The phrase ‘urgent, non-routine situation’ has been used to emphasize that the situation must be other than an ordinary one....A chronic or continually occurring problem does not represent an ‘urgent, non-routine situation.’”<sup>9</sup> The EPA's training materials provide that emergency conditions are “new”

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<sup>6</sup> 7 U.S.C. §136a.; 7 U.S.C. §136p.

<sup>7</sup> 7 U.S.C. § 136p (2012).

<sup>8</sup> 40 C.F.R. § 166.3.

<sup>9</sup> 50 Fed. Reg. 13,944, 13,946 (Apr. 8, 1985); *see* 51 Fed. Reg. 1,896, 1,896 (Jan. 15, 1986) (reaffirming that an emergency excludes “chronic or continually occurring problem[s]”).

circumstances “in which the status quo has changed in an unusual way that was unforeseen.”<sup>10</sup> The EPA warns that Section 18 exemptions should not be used to address predictable conditions or offer “revenue enhancement” to compensate for “decisions made with knowledge of the risks of agriculture.”<sup>11</sup>

In addition, an urgent, non-routine “emergency condition” exists only if three criteria are satisfied:

- 1) no effective pesticides are available under FIFRA that have labeled uses registered for control of the pest under the conditions of the emergency;
- 2) no economically or environmentally feasible alternative practices which provide adequate control are available; and
- 3) the situation involves significant risks to human health, threatened or endangered species, beneficial organisms or the environment, or will cause significant economic loss due to an outbreak or an expected outbreak of a pest, among other factors.<sup>12</sup>

First, effective, registered pesticides are available that are registered for use on citrus in Florida. There are currently numerous different “recommended” insecticides approved to address the insect in Florida alone; chlorpyrifos, dimethoate, phosmet, beta-cyfluthrin, fenpropathrin, zeta-cypermethrin, imidacloprid, thiamethoxam, flupyradifurone, spinetoram, tolfenpyrad, fenpyroximate, spirotetramat, and cyantraniliprole.<sup>13</sup> There are also products that combine active ingredients, such as Agri-Flex (thiamethoxam and abamectin), VoliamFlexi (thiamethoxam and chlorantraniliprole).

Indeed, based on the EPA’s and the USDA Office of Pest Management Policy’s sworn affidavits in court, these two agencies have averred that “flupyradifurone is expected to provide one of the only effective countermeasures for growers against the Asian citrus psyllid.” The agencies cite to purported scientific literature that does *not even mention* clothianidin as a tool for citrus greening.<sup>14</sup> So which one is it? Is clothianidin the tool growers need, and the claims made by the federal agencies to the D.C. Circuit Court of Appeals are misleading? Or is the literature cited to by the federal agencies incorrect? Or is this application for an emergency approval utterly meritless?

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<sup>10</sup> EPA Section 18 Training, Module 2 at 1-2.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> 40 C.F.R. § 166.3

<sup>13</sup> Univ. of Florida, “2021-2022 Florida Citrus Production Guide: Asian Citrus Psyllid” (Oct. 18, 2021), <https://edis.ifas.ufl.edu/publication/CG097>. See Table 1.

<sup>14</sup> See attachments.

There is no basis to grant an emergency exemption for clothianidin when these registered alternatives already include at least two other neonicotinoids: imidacloprid and thiamethoxam. As the University of Florida explained, clothianidin, imidacloprid, and thiamethoxam share the same mode of action and are not considered alternatives for rotation to prevent resistance.<sup>15</sup>

Second, there are economically or environmentally-feasible alternative practices available. In 2018, EPA declined to register a different insecticide, aldicarb, for use on Asian citrus psyllid on Florida citrus; instead pointing to “new growing techniques, planting with greening-tolerant rootstocks, continued hybridization of citrus trees, cybrids, nutritional supplements, and biological controls” to manage citrus greening.<sup>16</sup> The University of Florida also recommends noninsecticidal control using particle films, such as kaolin, to reduce psyllid infestation.<sup>17</sup> The University further recommends using biological controls, such as release of predaceous insects such as ladybeetles, spider, or a parasitic wasp.<sup>18</sup> Certain management practices can affect psyllid populations, such as removing alternative host plants (orange jasmine or box orange) near the grove to remove sources of infestation.<sup>19</sup> Finally, citrus greening can be managed through use of non-pesticide options such as gibberellic acid treatments or specific mineral nutrition.<sup>20</sup> Third, any purported economic loss is not due to an outbreak or expected outbreak of a pest. Outbreak of a pest is understood to mean an *unusual* increase in population size and does not include introduction (quarantine) or dissemination of an invasive pest that has already become established (chronic).<sup>21</sup> The Asian citrus psyllid was first detected in Florida in 1998, and by June 1999 had spread to twelve counties.<sup>22</sup> Florida’s 2014 application shows that by August 2008, greening disease had already spread to 32 counties, where the majority of citrus is grown.<sup>23</sup> A 2020 research article states that surveys of citrus groves show approximately 95% of citrus

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<sup>15</sup> Univ. of Florida, “2021-2022 Florida Citrus Production Guide: Asian Citrus Psyllid” (Oct. 18, 2021), <https://edis.ifas.ufl.edu/publication/CG097>

<sup>16</sup> Letter from Richard P. Keigwin, Director, Office of Pesticide Programs, EPA to James P. Rathvon and Cristen S. Rose, Counsels for AgLogic (Aug. 15, 2018).

<sup>17</sup> Univ. of Florida, “2021-2022 Florida Citrus Production Guide: Asian Citrus Psyllid” (Oct. 18, 2021), <https://edis.ifas.ufl.edu/publication/CG097>

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> UF IFAS, Use of Gibberellic Acid Treatments to Improve Health and Yield of HLB Diseased Trees, <https://crec.ifas.ufl.edu/citrus-research/presentations/gibberellic-acid-seminar/> (last accessed Feb. 2, 2022); Paul Natcher *New Research to Combat Citrus Greening Plants Seeds of Optimism Among Florida Growers* LAKELAND LEDGER (Dec. 14, 2021) <https://www.theledger.com/story/business/agricultural/2021/12/14/citrus-greening-uf-presents-research-fight-against-crop-disease/6508784001/>

<sup>21</sup> 50 Fed. Reg. 13,944, 13,946 (Apr. 8, 1985); 51 Fed. Reg. 1,896, 1,896 (Jan. 15, 1986) (finalizing rule and reaffirming choice to exclude “chronic or continually occurring problem[s]” from the definition of an emergency condition).

<sup>22</sup> Univ. of Florida, “Classical Biological Control of Asian Citrus Psyllid in Florida” () [https://ipm.ifas.ufl.edu/agricultural\\_ipm/psyllid.shtml](https://ipm.ifas.ufl.edu/agricultural_ipm/psyllid.shtml)

<sup>23</sup> Florida Emergency Exemption Request at 11 (Feb. 18, 2014), EPA Docket #EPA-HQ-OPP-2021-0952-0002.

trees are symptomatic.<sup>24</sup> While Asian citrus psyllid may cause economic loss, it is not due to an “outbreak;” it is an established pest. Moreover, an emergency condition may continue for longer than one year but generally only if, “a registered product relied upon by growers becomes permanently unavailable, a pest expands its range, or a registered product ceases to be effective against a pest.”<sup>25</sup> As discussed above, this is not the case here.

## 2. Re-certification is not appropriate

Under EPA’s regulations, an applicant for a “repeat” specific exemption may submit “re-certification” applications relying on previously submitted information provided certain conditions are met, including that the applicant certifies that certain conditions are met, including: 1) the emergency condition described in the preceding year’s application continues to exist; 2) all information in the preceding year’s application is still accurate; and 3) the applicant is not aware of any alternative chemical or non-chemical practice that may offer a meaningful level of pest control, or has provided documentation that each such known practice does not provide adequate control or is not economically or environmentally feasible.<sup>26</sup>

Re-certification is not available here because Florida, the applicant, has not provided the required certifications required by the regulations.<sup>27</sup>

Second, it is not appropriate to grant re-certification for a ninth year in a row based on 8-year-old information. EPA’s re-certification regulation contemplates information that was provided in the “preceding year,” not information that is eight years old. The only support Florida provided is its original 2014 Petition for its first exemption request for use of clothianidin. Florida did not provide EPA any current data whatsoever on the conditions necessitating this purported emergency, including alternative pesticides that EPA may have approved since 2014.

Moreover, the economic data does not take into account the last eight years, where chemicals like, streptomycin, and oxytetracycline were approved for citrus use.<sup>28</sup> Florida did not set forth any economically or environmentally-feasible alternative practices available since 2014, which is also a required certification in a request for re-certification. In its 2014 Petition, Florida states that antimicrobials and heat treatments, but that, they were in the early stages of development and not commercially viable “at this time.”<sup>29</sup> Surely, in the last eight years, alternative practices

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<sup>24</sup> Britt, K. et al., “The Detection and Surveillance of Asian Citrus Psyllid (*Diaphorina citri*)-Associated Viruses in Florida Citrus Groves,” *Front Plant Sci*, 17 Jan. 2020.

<sup>25</sup> 71 Fed. Reg. 4495, 4498 (Jan. 27, 2006).

<sup>26</sup> 40 C.F.R. § 166.20(b)(5); *id.* 166.20(b)(5)(v).

<sup>27</sup> Florida Recertification Request for Belay Insecticide (Dec. 3, 2021), EPA Docket #EPA-HQ-OPP-2021-0003

<sup>28</sup> Brett Erickson *Trump EPA Hands Citrus Growers a Parting Gift—Aldicarb and Streptomycin* CHEMICAL ENGINEERING NEWS (Jan 21, 2021) <https://cen.acs.org/environment/pesticides/Trump-EPA-hands-citrus-growers/99/i3>

<sup>29</sup> Florida Emergency Exemption Request at 12 (Feb. 18, 2014), EPA Docket #EPA-HQ-OPP-2021-0952-0002

have developed, such as those discussed above. Nor does EPA have any current information on whether lack of the exemption will cause significant economic loss due to an outbreak or an expected outbreak of a pest. EPA simply cannot rely upon such dated information to conclude an emergency condition continues to exist.

Third, the EPA's proposed decision to *double* the amount of clothianidin to be used on citrus is arbitrary and capricious because it appears to be based solely on stale information from 2014 and no additional information since then. The EPA cannot justify increasing the pounds of clothianidin approved for emergency use per year from 25,037 pounds to 50,150 pounds without data that necessitates this change. It cannot arbitrarily increase the max rate of application from 0.2 pounds per acre to 0.4 pounds per acre without evaluating current evidence of this need. However, the EPA has not analyzed any current data whatsoever on the conditions necessitating this purported increase in emergency authorization.

Fourth, if a repeated specific exemption is sought, EPA must give due consideration to whether progress has been made toward Section 3 registration of the use.<sup>30</sup> Florida's 2014 Petition states that Valent U.S.A. Corporation has a pending Section 3 application to existing use on non-bearing citrus to include bearing citrus.<sup>31</sup> In fact, Florida did not anticipate that more than one Section 18 exemption would be required based on the pending application, which EPA anticipated completing by June 18, 2014.<sup>32</sup> The Section 3 application for expanded use on citrus appears to be found at EPA Docket # EPA-HQ-OPP-2011-0860. EPA provided notice of the application for new uses on March 7, 2012.<sup>33</sup> EPA has not posted any substantive evaluation of the proposed registration since March 28, 2013.<sup>34</sup> An application for clothianidin citrus tolerances was withdrawn by IR-4, but in nine years we've received no update on Valent's application.<sup>35</sup> A *ninth* exemption for emergency use of clothianidin on citrus cannot be supported because it circumvents and undermines the safeguards under FIFRA provided by Section 3 to guard against unreasonable adverse environmental effects.<sup>36</sup>

Finally, EPA may authorize a specific emergency exemption only if it determines that an emergency condition exists *and* the use of the pesticide under the exemption will not cause unreasonable adverse effects on the environment.<sup>37</sup> While there is limited language in the 2014 Petition on pollinator protection, nowhere is there any recent analysis of risks to human health or

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<sup>30</sup> 40 C.F.R. § 166.25(b)(2).

<sup>31</sup> Florida Emergency Exemption Request at 19 (Feb. 18, 2014), EPA Docket #EPA-HQ-OPP-2021-0952-0002

<sup>32</sup> *Id.*

<sup>33</sup> 77 Fed. Reg. 13599, 13601 (March 7, 2012).

<sup>34</sup> *See generally*, EPA Docket # EPA-HQ-OPP-2011-0860

<sup>35</sup> Withdrawal of Pesticide Petitions for Establishment or Modification of Pesticide Chemical Tolerances or Tolerance Exemptions 81 Fed. Reg. 2803, 2804 (Jan. 19, 2016).

<sup>36</sup> In fact, the EPA pointed to the deadlines for Section 3 registrations in the Pesticide Registration Improvement Act as a reason to support the re-certification process. 71 Fed. Reg. 4495, 4498 (Jan. 27, 2006).

<sup>37</sup> 40 C.F.R. § 166.25(b).

the environment. There is no reference to endangered species, many of which are found within and around the citrus groves that are to be sprayed. This particularly worrisome given the EPA's draft Biological Evaluation that found clothianidin is likely to adversely affect 1,225 endangered species.<sup>38</sup> If EPA approves this exemption, it will be arbitrary and capricious because it appears to be based solely on stale information from 2014 and no additional information since then.

## **B. Abuse of the FIRA Emergency Exemption.**

Section 18 was added to FIFRA as part of the 1971 amendments to the Act.<sup>39</sup> The House Committee Report reviewing this amendment explained that the purpose of the emergency exemption was to allow “the President [to] enable farmers and ranchers to cope with emergency conditions before they spread to other areas” by “facilitat[ing] temporary registration of restricted use of pesticides for meeting emergency outbreaks of plant or animal diseases.”<sup>40</sup> Although the legislative history is slim, there is ample guidance in Congress's reports on its investigations into the EPA's implementation of the program.

Detailed accounting of the EPA's improper, routine use of the emergency exemption provision has been provided in three Government Accountability Office (“GAO”) reports that span 13 years. The first, in 1978, was a general analysis of the emergency permitting process as a whole. This investigation found that the EPA was granting emergency exemptions for “continuing, predictable pest outbreaks.”<sup>41</sup> When digging further into specific exemptions that were granted, the GAO concluded: “Several of these exemptions were granted repeatedly to the same agency. If valid emergencies exist and are likely to recur [sic] periodically, the EPA should register a pesticide to control such emergencies. On the other hand, it appears that some of these situations

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<sup>38</sup> U.S. Fish and Wildlife Service, Florida Scrub Jay <https://www.fws.gov/verobeach/msrppdfs/floridascrubjay.pdf> (last accessed Feb 1, 2022); U.S. Fish and Wildlife Service, Sand Skink <https://www.fws.gov/northflorida/Skink/skinks.htm> (last accessed Feb. 1, 2022).

<sup>39</sup> H.R. 10729, 92nd Cong. § 18 (1971); *see* Federal Insecticide, Fungicide, and Rodenticide Act, Pub. L. No. 80-104, 61 Stat. 163 (1947) (original enactment of FIFRA, lacking an emergency exemption).

<sup>40</sup> H.R. Rep. No. 92-511, at 27 (1971). The amendment as originally proposed only authorized exemptions for federal agencies and not for states. H.R. Rep. 92-511, at 63. States, meanwhile, were authorized under Section 24(c) to “certify” certain registered pesticides “formulated for intrastate distribution” for uses that were not registered, in order to “allow States the opportunity to . . . meet expeditiously and with less cost and administrative burden on the registrant the problem of registering for limited local use a pesticide needed to treat sudden pest infestation.” *Id.* at 28; *see id.* at 64. After review in the Senate, the bill as amended made exemptions available to states in addition to federal agencies. S.R. Rep. 92-838 at 11, 28. The bill after Senate amendments—and the current version of FIFRA—still retained the authorization for states to certify pesticides “to meet specific local needs.” *Id.* at 30; *see* 7 U.S.C. § 136v (c)(1).

One additional change to the amendment after Senate review: It authorized emergency exemptions by EPA action, rather than by executive orders of the president, as originally proposed in the House bill. *Compare* H.R. Rep. 92-511 at 27, *with* S.R. Rep. 92-838 at 11, 28.

<sup>41</sup> GAO. Report to the Congress by the Comptroller General of the United States. Special Pesticide Registration By The Environmental Protection Agency Should Be Improved. January 9, 1978. Pg. 30. Available here: <https://www.gao.gov/assets/130/120964.pdf>.

were not true emergencies, and the EPA should not have granted exemptions in these instances.”<sup>42</sup>

A follow-up GAO investigation in 1981 found that no progress had been made by the EPA in preventing repeated Section 18 approval for predictable pest outbreaks.<sup>43</sup> The agency “...analyzed 167 randomly selected emergency exemptions which disclosed that 45, or 27 percent, were repeatedly approved for 2 or more consecutive years and 15, or 9 percent, were for 3 or more consecutive years. For example: In New York, 7 of 30 emergency requests we reviewed were approved by the EPA for the same use in successive years. In two cases, emergency exemptions were approved in Washington for 5 and 6 consecutive years, respectively.”<sup>44</sup>

GAO testimony in 1991 in front of a House of Representatives Subcommittee on the Environment focused specifically on the EPA’s continuing approval of chronic, repeat emergency exemptions and provided the strongest language yet that the agency was still not complying with its regulations.<sup>45</sup> Based on its third investigation, GAO testified: “Although it recognizes that repeat emergency exemptions may circumvent, or at least give the appearance of circumventing, registration as well as cause other problems, the EPA regularly grants such emergency exemptions. In fiscal year 1990, the EPA granted almost 80 percent of the requests for exemptions for chemicals that had already received exemptions for that particular use for at least 3 years.”<sup>46</sup> The GAO goes on to add that despite the agency’s regulations that reasonable progress be made towards Section 3 registration within three years, “...66 of the fiscal year 1990 emergency use requests have received exemptions for more than 3 years (attachment III). Of these 66 repeat requests, the EPA denied only one.”<sup>47</sup>

As part of its investigation into the EPA’s abuse of Section 18, the House of Representatives Subcommittee on the Environment’s analysis found multiple cases of repetitive, long-term exemptions being granted – some lasting for more than 10 years.<sup>48</sup>

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<sup>42</sup> *Id.* at 31.

<sup>43</sup> GAO. Report to the Congress by the Comptroller General of the United States. Stronger Enforcement Needed Against Misuse Of Pesticides. Oct 15, 1981. Available here: <https://www.gao.gov/assets/140/135403.pdf>.

<sup>44</sup> *Id.* at 32.

<sup>45</sup> GAO. Testimony before the U.S. House of Representatives Subcommittee on Environment Committee on Science, Space, and Technology. EPA’s Repeat Emergency Exemptions May Provide Potential for Abuse. July 23, 1991. Available here: <https://www.gao.gov/assets/110/104033.pdf>.

<sup>46</sup> *Id.* at 6.

<sup>47</sup> *Id.* at 10.

<sup>48</sup> Senate Committee on Environment, Committee on Science, Space, and Technology, 102nd Cong., Section 18 (Emergency Exemptions) to the Federal Insecticide, Fungicide, and Rodenticide Act. Oct. 1992. Available here: <https://babel.hathitrust.org/cgi/pt?id=umn.31951d009898984;view=1up;seq=4>. “Examples of repetitive exemptions include exemptions granted for Botran on Peanut for a 14 year period; sodium chlorate on wheat for 10 years; glyphosate on wheat for 9 years, cryolite on potatoes for 10 years; Vinclozin on snap beans for 8 years, triadimefon on tomatoes for 8 years; hydrogen cyanamide on grapes for 6 years; cryomazine on peppers for 7 years,

### C. Section 18 Abuse Continues to the Present Day

Despite the conclusions of three GAO reports and one congressional investigation, the EPA is still granting emergency exemptions that are re-approved year after year after year. A 2017 analysis by the Center for Biological Diversity found that, since 2012, 14 states were granted emergency exemptions for sulfoxaflor for at least three consecutive years for the same “emergency.”<sup>49</sup> In a 2019 analysis of sulfoxaflor, the Center found that “[o]f the 18 states where the approvals were granted for sorghum and cotton crops, 12 have been given the approvals for at least four consecutive years for the same ‘emergency.’”<sup>50</sup>

An analysis of the EPA’s Emergency Exemption Database<sup>51</sup> found that chronic, long-term emergency exemptions are still common:

- 1) Every single one of the 170 emergency exemptions granted for bifenthrin since 2010 was for an “emergency” that lasted at least 3 years. And 163 out of the 170 were for an “emergency” that lasted at least 6 years.
- 2) All but two of the 118 emergency exemptions granted for dinotefuran since 2010 were for an “emergency” that lasted at least 3 years. And 105 out of the 118 were for an “emergency” that lasted at least 7 years.
- 3) A recurring exemption has been given for the last nine years to the state of Washington for lambda-cyhalothrin.

What is clear from all of this is that Section 18 is being abused and has been for the last 40-50 years. The EPA has been made aware of this for decades, yet in 2006 actually made it easier for states to reapply for emergency exemptions year after year with no time limit cutoff.<sup>52</sup> The agency also revised 40 C.F.R. § 166.24(a)(7)(i) and § 166.25(b)(2)(ii) “...so that the presumption against adequate progress toward registration of repeat emergency exemptions for uses being supported by the IR-4 program would begin after 5 years, 2 years more than allowed for uses supported by other, typically commercial, parties.”<sup>53</sup>

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cypermethrin on onions for 5 years; bromoxinil on rice for 5 years; chlorothalonil on mushrooms for 5 years; mancozeb on ginseng for 4 years; thiobencarb on assorted vegetables for 5 years, and triflumizole on spathiphyllum for 5 years.”

<sup>49</sup> Parent, S and Donley, N. Poisonous Process: How the EPA’s Chronic Misuse of ‘Emergency’ Pesticide Exemptions Increases Risks to Wildlife. Dec. 2017. Available here: [https://www.biologicaldiversity.org/campaigns/pesticides\\_reduction/pdfs/Poisonous\\_Process.pdf](https://www.biologicaldiversity.org/campaigns/pesticides_reduction/pdfs/Poisonous_Process.pdf).

<sup>50</sup> Center for Biological Diversity. Press release - Trump EPA OKs ‘Emergency’ to Dump Bee-killing Pesticide on 16 Million Acres. Feb. 15, 2019. Available here: [https://www.biologicaldiversity.org/news/press\\_releases/2019/sulfoxaflor-02-15-2019.php](https://www.biologicaldiversity.org/news/press_releases/2019/sulfoxaflor-02-15-2019.php).

<sup>51</sup> EPA Emergency Exemption Database. Last updated: 04/09/2019. Accessed 5/1/2019. Available here: <https://iaspub.epa.gov/apex/pesticides/f?p=124:2:.....>.

<sup>52</sup> 71 Fed. Reg. 4495.

<sup>53</sup> *Id.*

## II. The EPA's Failure to Consult on the Emergency Exemption for Clothianidin Use in Citrus Agriculture is a Violation of the Endangered Species Act.

The EPA's approval of clothianidin on citrus under Section 18 of FIFRA violates Section 7 of the Endangered Species Act. The approval will lead to a "may effect" determination for dozens on imperiled species, requiring the EPA to initiate consultation as required by the ESA.

In passing the Endangered Species Act, Congress made a deliberate choice "to give endangered species priority over the 'primary missions' of federal agencies" in order to "halt and reverse the trend toward species extinction, *whatever the cost*."<sup>54</sup> Accordingly, Section 2(c) of the ESA establishes that it is "the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act."<sup>55</sup>

While many of the ESA's provisions work to effectuate the conservation goals of the statute, the "heart of the ESA" is the interagency consultation requirements of Section 7.<sup>56</sup> To reach these goals, Section 7(a)(2) of the ESA requires federal agencies to "insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [the critical] habitat of such species."<sup>57</sup> Agency "action" is broadly defined in the ESA's implementing regulations to include "(a) actions intended to conserve listed species or their habitat; (b) the promulgation of regulations; (c) the granting of licenses, contracts, leases, easements, rights-of-way, permits, or grants-in-aid; or (d) actions directly or indirectly causing modifications to the land, water, or air."<sup>58</sup> Section 7 consultations are required on an agency action "so long as the agency has 'some discretion' to take action for the benefit of a protected species."<sup>59</sup> If "an agency has *any* statutory discretion over the action in question, that agency has the authority, and thus the responsibility, to comply with the ESA."<sup>60</sup>

At the first step of the consultation process, an action agency must complete a biological assessment or biological evaluation to identify species that may be affected.<sup>61</sup> If the agency determines that an action *may affect* a species — whether such effects are beneficial or unknown in character and even if the effect is small, indirect, or the result of cumulative actions — it must

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<sup>54</sup> *Tenn. Valley Authority v. Hill* ("TVA"), 437 U.S. 153, 175, 184, 185 (1978).

<sup>55</sup> 16 U.S.C. § 1531(c)(1).

<sup>56</sup> *Western Watersheds Project v. Kraayenbrink*, 632 F.3d 472, 495 (9th Cir. 2011); 16 U.S.C. § 1536.

<sup>57</sup> *Id.* § 1536(a)(2).

<sup>58</sup> *Id.* § 402.02 (emphasis added); see also *Pacific Rivers Council v. Thomas*, 30 F.3d 1050, 1054-55 (9th Cir. 1994); *Conner v. Burford*, 848 F.2d 1441, 1453 (9th Cir. 1988); *National Wildlife Fed'n v. FEMA*, 345 F. Supp. 3d 1151, 1169 (W.D. Wash. 2004).

<sup>59</sup> *NRDC v. Jewell*, 749 F.3d 776, 779-80 (9th Cir. 2014).

<sup>60</sup> *Am. Rivers v. United States Army Corps of Eng'rs*, 271 F.Supp.2d 230, 251 (D.D.C. 2003) (emph. added)).

<sup>61</sup> 16 U.S.C. § 1536(c).

consult with the Services.<sup>62</sup> If the action agency determines, after a biological evaluation or through informal consultation with the Services, that the proposed action “may affect,” but is “not likely to adversely affect,” any listed species or habitat,<sup>63</sup> then it must obtain the written concurrence of the Services, and no further consultation is required.<sup>64</sup> If an action agency determines that its action will “likely adversely affect” any listed species, then a formal consultation must occur. Only where the action agency determines that its action will have “no effect” on listed species or designated critical habitat is the consultation obligation lifted.<sup>65</sup> Under the formal consultation process, the Services must complete a biological opinion that evaluates the agency action. If the Services find that the action will jeopardize a species or result in the destruction or adverse modification of critical habitat, they must identify “reasonable and prudent alternatives” for the action that comply with Section 7.<sup>66</sup> If the action will not result in jeopardy, then they must provide “reasonable and prudent measures” to minimize take of any listed species, as well as an “incidental take statement,” which provides the action agency legal coverage for any remaining take that is unavoidable.<sup>67</sup>

Critically, strict adherence to the procedural requirements of Section 7 and the consultation regulations is absolutely necessary to ensure against the extinction of the nation’s biodiversity. As the Ninth Circuit aptly explained, “because the procedural requirements are designed to ensure compliance with the substantive provisions...the strict substantive provisions of the ESA justify *more* stringent enforcement of its procedural requirements.”<sup>68</sup>

Granting an emergency exemption under Section 18 of FIFRA is a discretionary action requiring consultation under Section 7. The EPA has continuously granted this exemption without ensuring through either initiation or completion of consultation that its actions regarding the emergency approval of clothianidin do not jeopardize the continued existence of endangered and threatened species or destroy or adversely modify designated critical habitat. Accordingly, the EPA’s emergency approval violates Section 7(a)(2) of the ESA.

**A. Reapproving Emergency Clothianidin Use of Citrus in Florida is a Discrete Action that Will Clearly Lead to a “May Affect” Determination.**

These emergency exemptions have led to extensive use of clothianidin throughout the range of many endangered species. For example, clothianidin was widely used throughout Central Florida

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<sup>62</sup> 50 C.F.R. §§ 402.02, 402.14(a), (g).

<sup>63</sup> A finding that the action “may affect” but is “not likely to adversely affect” means all effects are expected to be “discountable, insignificant, or completely beneficial.” *Id.* at xv, 3-12, 3-13.

<sup>64</sup> 16 U.S.C. § 1536(c); 50 C.F.R. §§ 402.13(a), 402.14(b)(1).

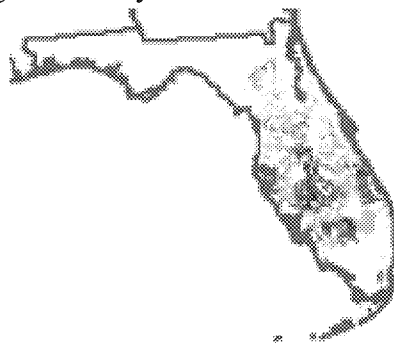
<sup>65</sup> 50 C.F.R. § 402.14(a).

<sup>66</sup> 16 U.S.C. § 1536(b)(3)(A); 50 C.F.R. § 402.14(h)(3).

<sup>67</sup> 16 U.S.C. § 1536(b); 50 C.F.R. §§ 402.14(h), (i).

<sup>68</sup> *Thomas v. Peterson*, 753 F.2d 754, 764 (9th Cir. 1985).

after it was authorized under the same “emergency” exemption during the 2018 growing season, as illustrated by the U.S. Geological Survey’s National Water Quality Assessment Program.<sup>69</sup>



Last year, the EPA released a draft Biological Evaluation assessing risks to endangered species from clothianidin, finding that the pesticide is likely to adversely affect hundreds of protected Florida species. Specifically, the evaluation found that clothianidin was likely to adversely affect the sand skink, Florida scrub jay, Audubon’s crested caracara, bluetail mole skink, the eastern indigo snake, and the endangered Florida bonneted bat. Given their habitat range and considering the report, it is clear that the repeated approval of clothianidin would cross the may affect threshold and also the likely to adversely affect threshold for every one of these listed species. Without consultation as required by law, these species would be harmed in violation of the ESA.

#### 1. Sand Skink (*Neoseps reynoldsi*)

The sand skink is a small, subterranean lizard that is only found in the scrub habitat of Central Florida. The sand skink is found in almost all major citrus growing counties where clothianidin would be used, including Polk County.<sup>70</sup> Most suitable habitat for sand skinks occurs in small patches surrounded by citrus groves.<sup>71</sup> However, the continued expansion of citrus agriculture in sandy ridges of Central Florida has found sand skinks living within the very same citrus groves affected by this action.<sup>72</sup> A clear overlap between citrus agriculture and the protected sand skink is evident:

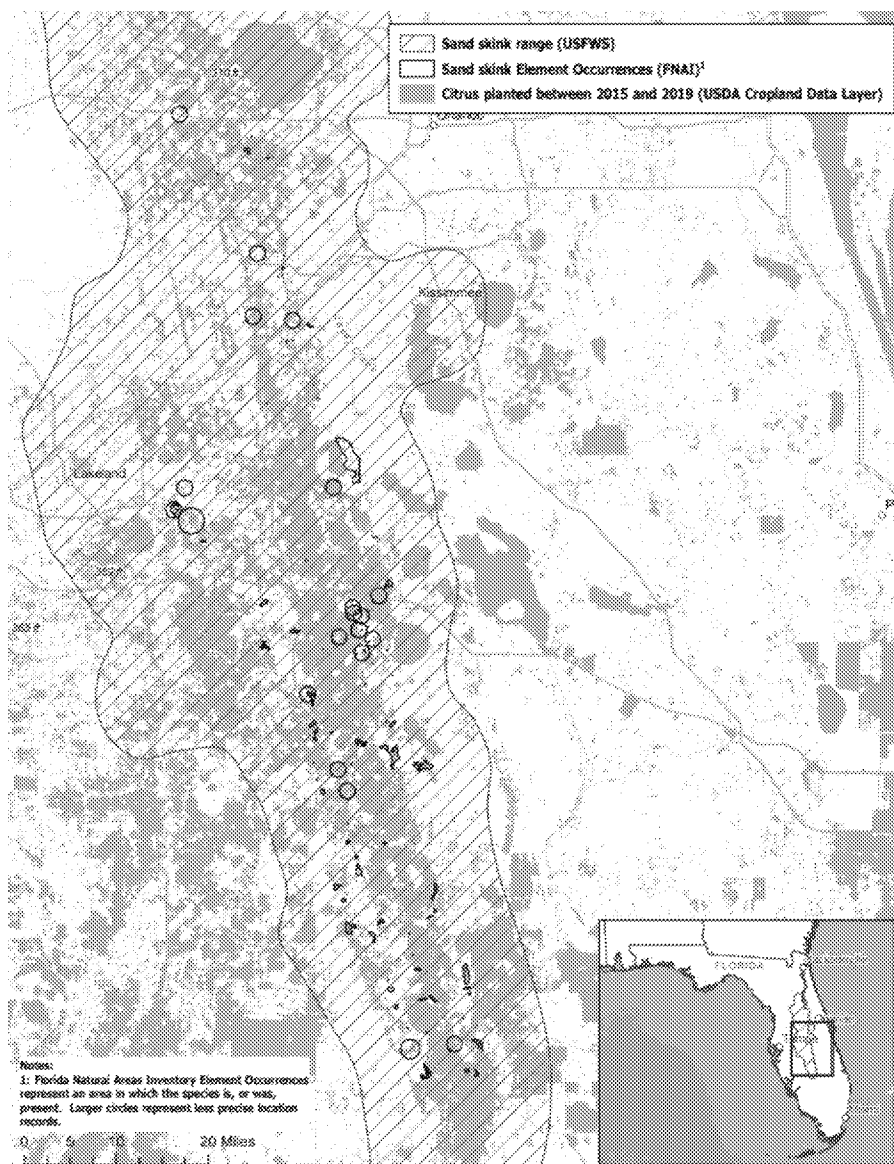
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<sup>69</sup> Pesticide Emergency Exemptions, 83 Fed. Reg. 24988 (May 31, 2018); U.S. Geological Survey, Nat’l Water Quality Assessment Project, Pesticide National Synthesis Project (last accessed Dec. 8, 2021) [https://www.usgs.gov/mission-areas/water-resources/science/pesticides-and-water-quality?qt-science\\_center\\_objects=0#qt-science\\_center\\_objects](https://www.usgs.gov/mission-areas/water-resources/science/pesticides-and-water-quality?qt-science_center_objects=0#qt-science_center_objects).

<sup>70</sup> U.S. EPA, Draft National Level Listed Species Biological Evaluation for Clothianidin <https://www.epa.gov/endangered-species/draft-national-level-listed-species-biological-evaluation-clothianidin> (last accessed Feb 1, 2022).

<sup>71</sup> U.S. FWS Peninsular Florida Species Conservation and Consultation Guide for Skinks 4 (July 31, 2020) [https://www.fws.gov/verobeach/ReptilesPDFs/20200731\\_SkinkConservationandConsultationGuide.pdf](https://www.fws.gov/verobeach/ReptilesPDFs/20200731_SkinkConservationandConsultationGuide.pdf).

<sup>72</sup> David Pike et. al *Use of Altered Habitats by the Endemic Sand Skink (*Plestiodon reynoldsi* Stejneger)* 6(4) *Southeastern Naturalist* 715 (2008).



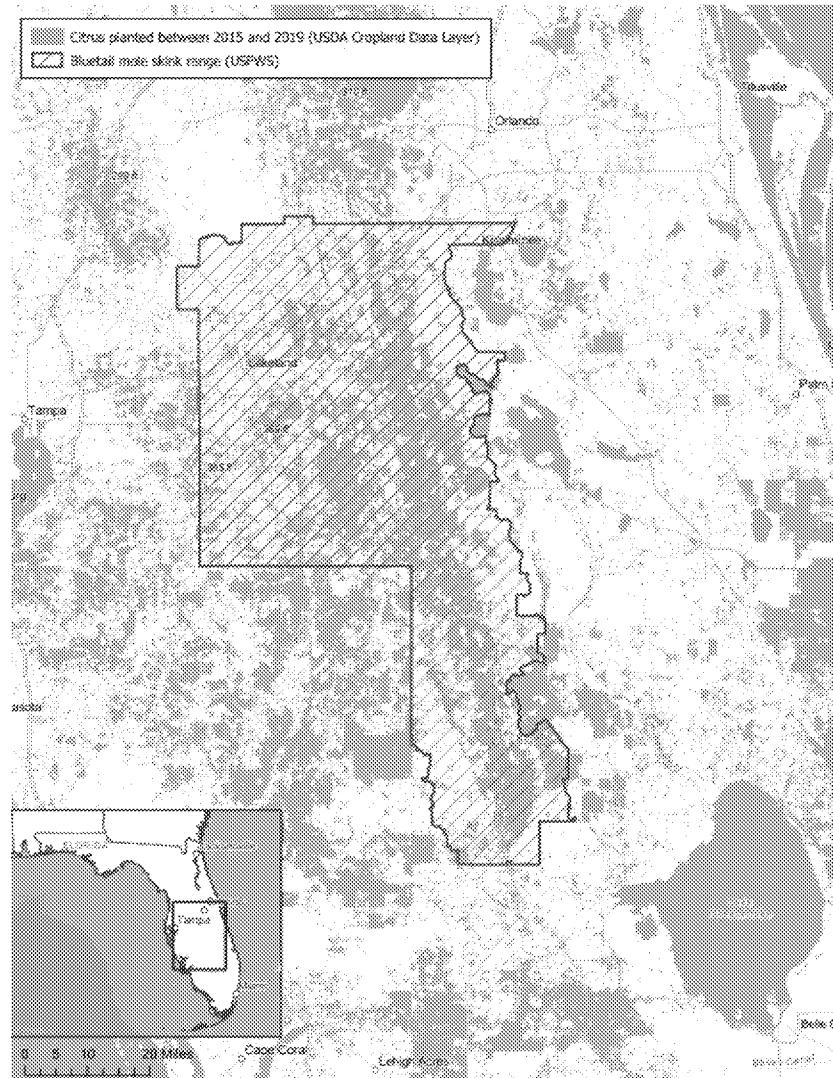
It is apparent that the repeated approval of clothianidin would cross the may affect threshold and also the likely to adversely affect threshold for the sand skink. Thus, the EPA is required to consult with Services before authorizing approval of clothianidin on citrus under Section 18 of FIFRA, as required by Section 7 of the ESA.

## 2. Bluetail Mole Skink (*Eumeces egregious lividus*)

The bluetail mole skink is a threatened lizard that can typically be found living under leaf litter and exhibits similar burrowing behavior as the sand skink.<sup>73</sup> They occur in nearly the same

<sup>73</sup> Fla. Fish and Wildlife Conservation Comm. Bluetail Mole Skink <https://myfwc.com/wildlifehabitats/profiles/reptiles/bluetail-mole-skink/> (last accessed Feb. 6, 2022).

habitat types and in close proximity to the sand skink. Meaning that the bluetail mole skink can also be found in citrus groves affected by this action.<sup>74</sup> A clear overlap between citrus agriculture and the protected bluetail mole skink is evident:

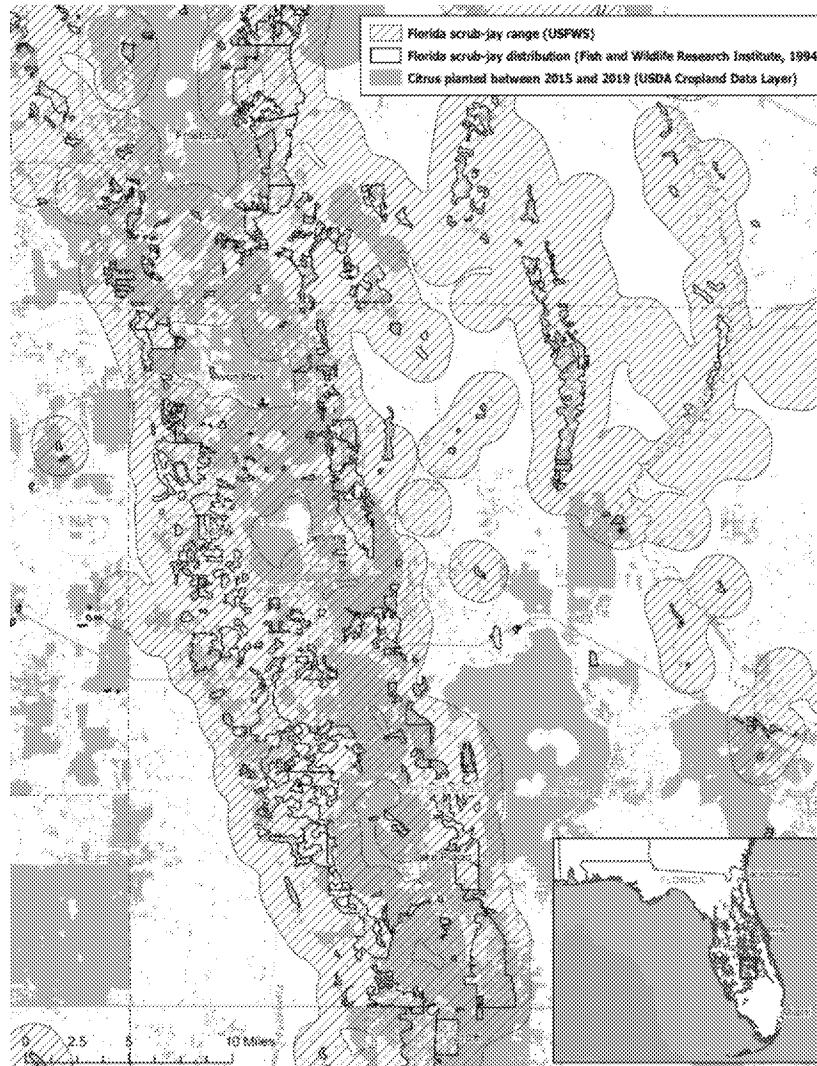


It is apparent that the repeated approval of clothianidin would cross the may affect threshold and also the likely to adversely affect threshold for the bluetail mole skink. Thus, the EPA is required to consult with Services before authorizing approval of clothianidin on citrus under Section 18 of FIFRA, as required by Section 7 of the ESA.

<sup>74</sup> U.S. FWS Peninsular Florida Species Conservation and Consultation Guide for Skinks at 4.

### 3. Florida Scrub Jay (*Aphelocoma coerulescens*)

The Florida scrub jay is a threatened bird that were historically found in almost every peninsular county in Florida.<sup>75</sup> Yet only 60 percent of the original population exists today, in part due to conversion of its habitat to citrus agriculture.<sup>76</sup> This imperiled bird has been observed nesting in active citrus groves.<sup>77</sup> Moreover, there is a clear overlap between citrus agriculture and the Florida scrub jay's habitat:



It is apparent that the repeated approval of clothianidin would cross the may affect threshold and

<sup>75</sup> U.S. FWS Florida Scrub Jay <https://www.fws.gov/verobeach/msrppdfs/floridascrubjay.pdf> (last accessed Feb 6, 2022).

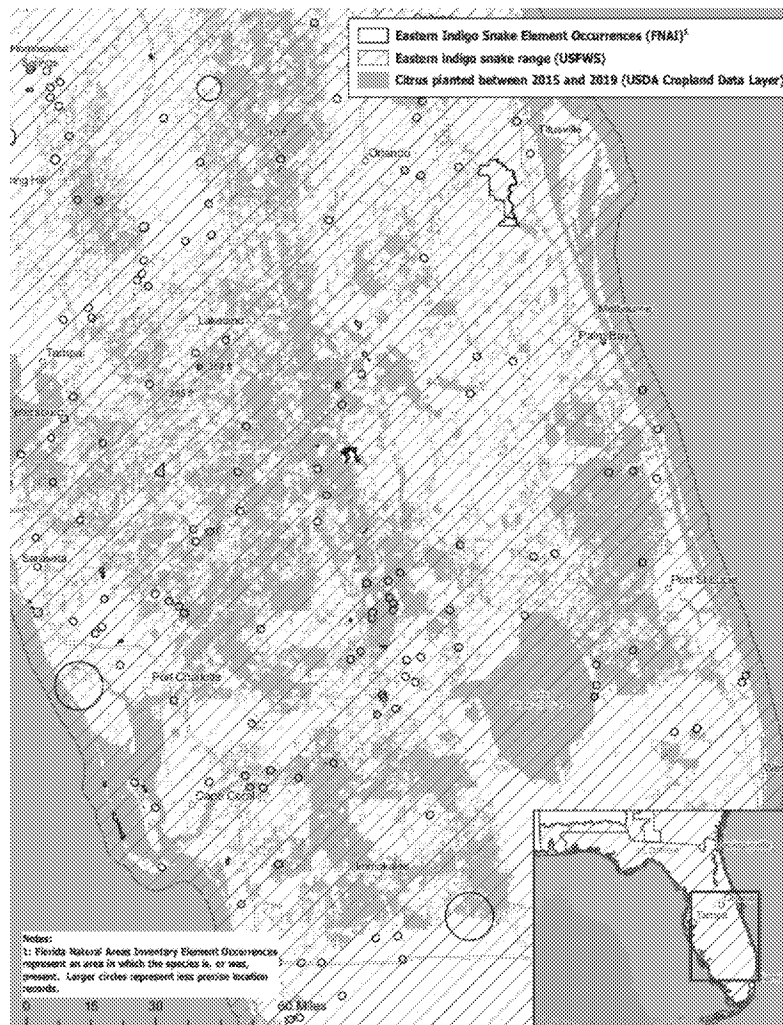
<sup>76</sup> William R. Cox *Florida Scrub Jay: Threatened by Shrinking Habitat* TOTI (Sep. 7, 2021) <https://www.toti.com/2021/09/07/366359/florida-scrub-jay-threatened-by-shrinking-habitat>

<sup>77</sup> Fla. Scrub-Jay Trail, Fla. Scrub Jay Trail News [http://www.scrubjaytrail.org/about/about\\_trail\\_page01.html](http://www.scrubjaytrail.org/about/about_trail_page01.html) (last accessed Feb. 6, 2022).

also the likely to adversely affect threshold for the Florida scrub jay. Thus, the EPA is required to consult with Services before authorizing approval of clothianidin on citrus under Section 18 of FIFRA, as required by Section 7 of the ESA.

#### 4. Eastern Indigo Snake (*Drymarchon couperi*)

The eastern indigo snake is a large, threatened snake that historically occurred throughout Florida. The snake prefers scrub habitats, but also lives near and in a variety of human-altered habitats like citrus groves.<sup>78</sup> These habitats support the snake's critical resource needs. And since the snake uses below-ground shelter for refuge, this action could result in pesticides applied directly to their shelter. A clear overlap between citrus agriculture and the threatened eastern indigo snake is evident:

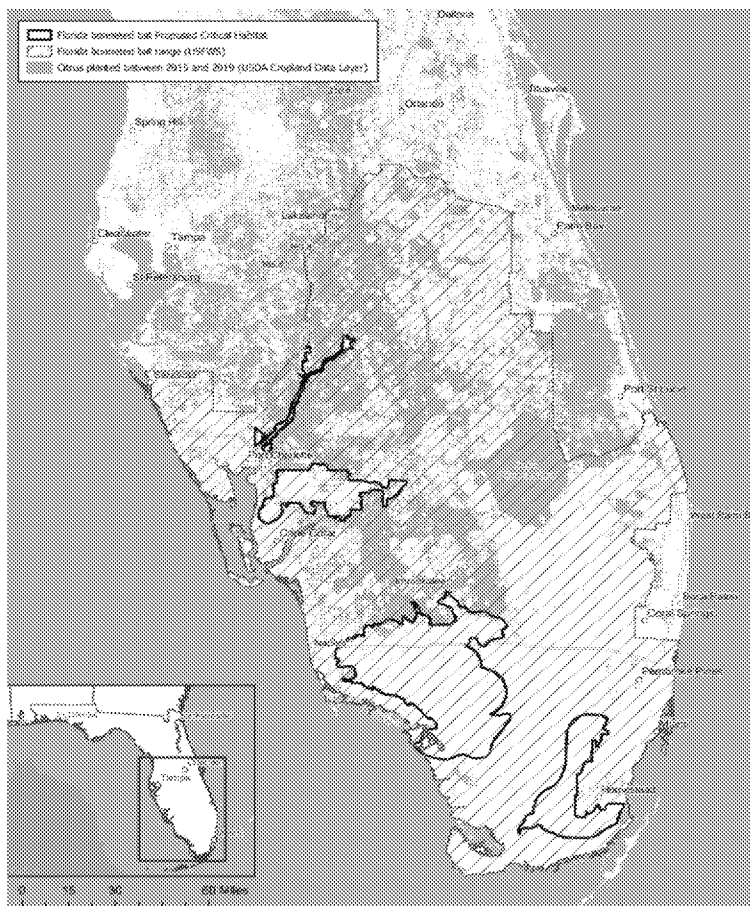


<sup>78</sup> K.M. Enge et. al *The Historical and Current Distribution of The Eastern Indigo Snake* 8 Herpetological Conservation & Biology 288–307 (2013); see also U.S. FWS, Species Status Assessment Report for the Eastern Indigo Snake 115 (July 8, 2019) (An eastern indigo snake is pictured in a citrus grove)

Because the threatened snake is an apex predator, pesticides that bioaccumulate through the food chain present a fatal hazard.<sup>79</sup> It is apparent that the repeated approval of clothianidin would cross the may affect threshold and also the likely to adversely affect threshold for the eastern indigo snake. Thus, the EPA is required to consult with Services before authorizing approval of clothianidin on citrus under Section 18 of FIFRA, as required by Section 7 of the ESA.

##### 5. Florida Bonneted Bat (*Eumops floridanus*)

The Florida bonneted bat is an endangered bat that occurs predominately in central and southwest Florida. Aspects of the bat's life history, such as slow reproduction, low fecundity, and foraging and roosting habits, make it susceptible to pesticide exposure from a variety of sources.<sup>80</sup> Additionally, areas with intensive pesticide activity, like citrus agriculture, may not support an adequate food base for the species.<sup>81</sup> A clear overlap between citrus agriculture and the endangered Florida bonneted bat range and critical habitat is evident:



<sup>79</sup> U.S. FWS, Species Status Assessment Report for the Eastern Indigo Snake 49 (July 8, 2019)

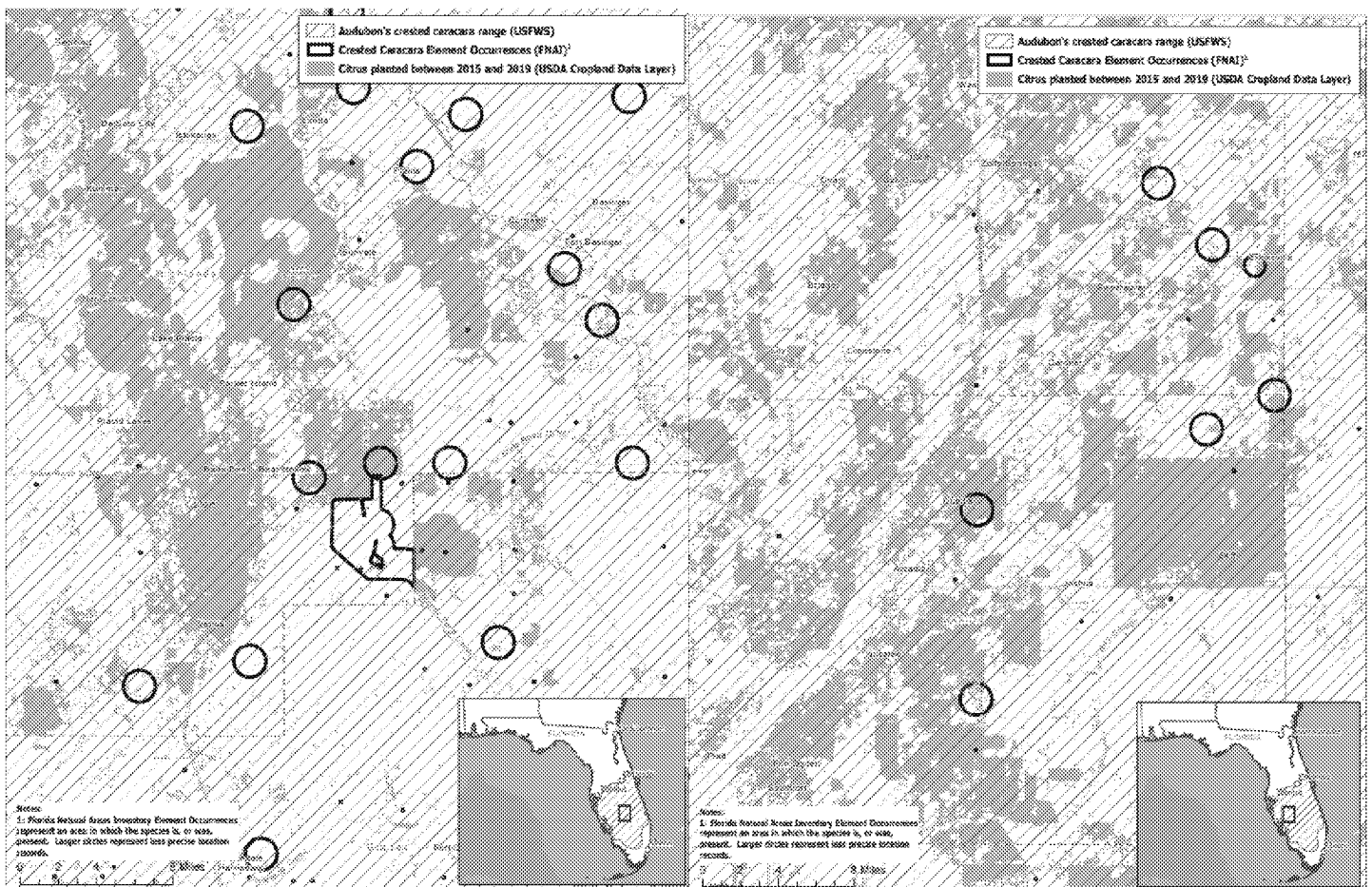
<sup>80</sup> Endangered and Threatened Wildlife and Plants; Endangered Species Status for the Florida Bonneted Bat 78 Fed. Reg. 61004, 61035 (Oct. 3, 2013).

<sup>81</sup> *Id.* at 61036.

It is apparent that the repeated approval of clothianidin would cross the may affect threshold and also the likely to adversely affect threshold for the Florida bonneted bat. Thus, the EPA is required to consult with the Services before authorizing approval of clothianidin on citrus under Section 18 of FIFRA, as required by Section 7 of the ESA.

#### 6. Audubon's Crested Caracara (*Polyborus plancus audubonii*)

The Audubon's crested caracara is a large, threatened raptor found in south-central Florida in large prairies near citrus operations.<sup>82</sup> The mosaic of citrus agriculture and native prairie in south-central Florida has led to non-breeding individuals using orange groves as roosts.<sup>83</sup> A clear overlap between citrus agriculture and the threatened Audubon's crested caracara evident:



<sup>82</sup> U.S. FWS Audubons' Crested Caracara <https://www.fws.gov/verobeach/msrppdfs/audubonscrestedcaracara.pdf> (last accessed Feb 7, 2022)

<sup>83</sup> James F. Dwyer & Joan L. Morrison *Range Sizes and Habitat Use of Non-breeding Crested Caracaras in Florida* 84(3) J. Field Ornithology 223–233 (2013). (“Citrus groves were also used more than expected given availability by non-breeding caracaras. . .”)

It is apparent that the repeated approval of clothianidin would cross the may affect threshold and also the likely to adversely affect threshold for the Audubon's crested caracara. Thus, the EPA is required to consult with the Services before authorizing approval of clothianidin on citrus under Section 18 of FIFRA, as required by Section 7 of the ESA.

### **III. Increased Clothianidin Use on Citrus Severely Impacts Native Florida Pollinators**

It would be egregious for the EPA to approve expanded uses of any neonicotinoid given the substantial body of science indicating that they are playing an outsized role in driving pollinator population declines. Clothianidin is a neonicotinoid insecticide that is systemic, highly toxic to pollinators, and persistent in the environment. The inadequate data submitted by the state of Florida does not justify doubling the amount of clothianidin used (from a total of 25,037 pounds per year to 50,150 pounds per year), especially without any additional consideration for how this will impact Florida's imperiled pollinators. There is no assurance that the doubling clothianidin use will not result in lethal effect, especially when a reduced application already predicted sublethal effects to pollinators.<sup>84</sup>

At least twenty-five native bee and butterfly species stand to be impacted by this action, including the American bumble bee and monarch butterfly, both of which are in the process of potentially being listed under the ESA.

#### **A. American bumble bee (*Bombus pensylvanicus*)**

The American bumble bee was historically one of the most common bumble bees in Florida. It has declined in the most recent decades as a result of multiple concurrent stressors including the widespread use of neonicotinoid insecticides.<sup>85</sup> The American bumble bee is active for the entire growing season and would likely be exposed to clothianidin in the pollen and nectar of citrus trees, but also in the nectar and pollen of any flowering weeds that grow in or near citrus orchards. Bumble bees nest in underground cavities or on the surface of the ground, and unlike honey bees, bumble bees are in direct contact with potentially contaminated soil in their nest. The FWS is considering whether to protect the American bumble bee under the ESA following a 2021 petition from the Center.<sup>86</sup>

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<sup>84</sup> Florida Emergency Exemption Request at 17 (Feb. 18, 2014), EPA Docket #EPA-HQ-OPP-2021-0952-0002

<sup>85</sup> Jess Tyler and Bombus Pollinators Association of Law Students, "PETITION TO LIST THE AMERICAN BUMBLEBEE *Bombus Pensylvanicus* (de Geer), 1773 AS AN ENDANGERED SPECIES UNDER THE U.S. ENDANGERED SPECIES ACT" (Portland, Oregon and Albany, New York: Center for Biological Diversity and Bombus Pollinators Association of Law Students, 2021).

<sup>86</sup> FWS, "Endangered and Threatened Wildlife and Plants; 90-Day Findings for Five Species" (Federal Register, 2021), 53937, <https://www.govinfo.gov/link/fr/86/53937?link-type=pdf>.

## B. Monarch butterfly (*Danaus plexippus plexippus*)

The monarch butterfly is a transitory resident in Florida only reaching Florida after the major citrus bloom period. Adults could be exposed to clothianidin in citrus orchards via the consumption of contaminated nectar or pollen from flowering weeds in or near citrus orchards. Larvae could also be exposed while feeding on contaminated milkweed leaves from plants in or near an orchard. The FWS considers listing the monarch butterfly under the ESA warranted<sup>87</sup> because of its steep population decline and multiple, widespread threats including the use of neonicotinoid insecticides.<sup>88</sup>

## C. Other Native Pollinator Species

Additionally, dozens of pollinators species are likely to be found within citrus, and likely to be impacted by increased clothianidin use as a result of this action:

Table 1. Bee and butterfly species potentially found in or near citrus orchards in Florida.

Common Name	Scientific Name	NatureServe Rank
<i>Bees</i>		
Southern Plains Bumble Bee	<i>Bombus fraternus</i>	G3
American Bumble Bee	<i>Bombus pensylvanicus</i>	G3
Variable Cuckoo Bumble Bee	<i>Bombus variabilis</i>	G1
Leafcutter bee	<i>Megachile rubi</i>	G3
Blue Calamintha Bee	<i>Osmia calaminthae</i>	G1
Giant Scrub Plasterer Bee	<i>Caupolicana floridana</i>	G1
Leafcutter bee	<i>Trachusa crassipes</i>	G1
Southeastern Ashmeadiella Bee	<i>Ashmeadiella floridana</i>	G3

<sup>87</sup> FWS, “Endangered and Threatened Wildlife and Plants; 12-Month Finding for the Monarch Butterfly” (Federal Register, 2020), 81813, <https://www.govinfo.gov/link/fr/85/81813?link-type=pdf>.

<sup>88</sup> FWS, “Monarch (*Danaus Plexippus*) Species Status Assessment Report, Version 2.1” (U.S. Fish and Wildlife Service, 2020), 38–40, <https://ecos.fws.gov/ServCat/DownloadFile/191345>.

a cellophane bee	<i>Colletes longifacies</i>	G1
Southwest Florida Stelis Bee	<i>Stelis ater</i>	G2
<i>Butterflies and Moths</i>		
Loammi Skipper	<i>Atrytonopsis loammi</i>	G2
Frosted Elfin	<i>Callophrys irus</i>	G2
Zestos Skipper	<i>Epargyreus zestos</i>	GU
Palmetto Skipper	<i>Euphyes arpa</i>	G3
Berry's Skipper	<i>Euphyes berryi</i>	G2
Palatka Skipper	<i>Euphyes pilatka</i>	G3
Monarch Butterfly	<i>Danaus plexippus</i>	G4
Nickerbean Blue	<i>Cyclargus ammon</i>	G4
Cofaqui Giant-Skipper	<i>Megathymus cofaqui</i>	G3
Martial Hairstreak	<i>Strymon martialis</i>	G3
A Prominent moth	<i>Datana modesta</i>	GU
False-windowed Sphinx	<i>Madoryx pseudothyreus</i>	G3
Lesser Wasp Moth	<i>Pseudocharis minima</i>	G3
Grisatra Underwing	<i>Catocala grisatra</i>	G2

The EPA cannot ignore the impacts to these species, especially since it has allowed their populations to be hit with emergency use of clothianidin eight years in a row. The cumulative impacts of these emergency approvals, in addition to the ongoing use of other neonicotinoids and other pesticides is taking a significant toll on Florida's pollinator populations.

#### IV. Conclusion

The EPA continues approving emergency exemptions for the same chemical in the same location for the same crops year after year, sometimes for decades. This practice has essentially served as a workaround for the Section 3 registration process – allowing uses of pesticides that harm endangered species year after year without any legally required conservation measures. It has been done without any consultation as required by the Endangered Species Act. It has been done in violation of FIFRA. It has been done at the expense of native pollinators.

This must end.

We urge you to deny this Section 18 application and end the abuse of the emergency exemption provision as a loophole for non-emergencies risks de-legitimizing actual emergencies.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J.W. Glass', written in a cursive style.

J.W. Glass

*EPA Policy Specialist*

Center for Biological Diversity